IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1083 OF 2003.

Smt. Mangal suryakant Ghatage ..Petitioner
V/s
M/s Inayat Roadlines and others ..Respondents.

Mr. V.V. Purwant i/b Amit B. Borkar for the petitioner.
Mrs. M.H. Mhatre, A.P.P. for State.
Mr.A.S. Desai for respondent No.1.
Mr. Satyajit A. Mirajkar for respondent No.2..2.

CORAM : S.C. DHARMADHIKARI, J.

DATE : 7TH SEPTEMBER, 2006.

P.C.

. Heard Mr. Purwant for the original complainant-petitioner, Mr.Desai appears for respondent NO.1, Mr.Mirajkar for respondent NO.2 and Mrs. Mhatre for the State.

2. The respondent No.2, the petitioner is aggrieved by the order passed in criminal Revision Application No. 212/2002 dated 23rd October, 2002 passed by the 2nd Adhoc Additional Sessions Judge, Kolhapur.

3. The Revision Petition was directed against the order passed below Exh.4 in Mis. Criminal Application

No. 55/2002. The said order was passed by the learned Judicial Magistrate, First Class, Kagal.

4. The respondent no.1 pointed out that the learned Magistrate could not have issued a search warrant in respect of the subject vehicle. In the submission of the revision applicant, the dispute over the vehicle is civil in nature. A civil suit is filed by the first respondent against the original complainant.

5. After perusing the materials and finding that there was indeed some transaction with regard to the subject vehicle between the accused and the husband of the complainant and a xerox copy of the agreement for sale which was allegedly executed being placed on record, the Revisional Court holds that the question of issuing a search warrant does not arise. The dispute is about title and ownership to the vehicle and in such circumstances, there was no justification to issue a search warrant are the findings of the revisional Court.

6. Mr. Purwant appearing for the petitioner submits that the complaint is filed by the petitioner alleging commission of offence under section 406 of

Indian Penal code. The accused is the respondent No.2 Chandrakant, who is the brother of the deceased husband of the complainant and the vehicles were handed over to him because the transport business was being managed by him after the death of the deceased husband. In such circumstances and by obtaining signatures on some documents the vehicle was allegedly handed over to a third party by the accused. The vehicle therefore, was to be traced and the magistrate was justified in exercising his powers under Section 93 of Code of criminal Procedure.

7. The first respondent who is the revision applicant is represented by Shri Desai and his submission is that once, there is a transaction of sale between the parties then there is no justification for issuing a search warrant and thus the revisional Court was not in error in passing the impugned order. This court in the absence of any error apparent or perversity cannot exercise its jurisdiction under Article 227 of Constitution of India r/w section 482 of Code of Criminal Procedure.

8. After having perused the complaint which is

alleging an offence under section 406 of Indian Penal Code against the respondent No. 2 before me, I am of the opinion that the learned Magistrate was not at all clear as to why he has issuing a search warrant under Section 93 of Cr.P.C. The very exercise of power under section 93(1)(a) of Cr.P.C. contemplates that where the Court has reason to believe that a person to whom summons or order under section 91 has been issued or a requisition under section 92(1) has been or might be addressed will not or would not produce the document or thing required by such summons or requisition or where such document or under is not known to the court to be in possession of any person or where the Court considers that for the purpose of any enquiry, trial or other proceedings under the Code will be searched by general inspection, it may issue such a warrant. The order of the learned Magistrate does not disclose as to why the learned Magistrate deems it fit to exercise his jurisdiction under aforesaid provision. The cryptic order passed by him below Exh.4 is only on the basis that the RTO records shows that the trucks are standing in the name of deceased husband of the complainant and accused is in possession thereof. In my view, the ingredients of section 93(1) (a) or (b) or (c) having

prima facie not found to be satisfied, the learned Sessions Judge was not in error in interfering in his revisional jurisdiction to setting aside the order passed by the learned Magistrate. The Revisional Court therefore, has not committed any error apparent nor its order said to be suffering from any perversity so as to call for any interference in my jurisdiction under above mentioned provisions. Petition is dismissed.

9. However, neither the order passed by the revisional Court nor this Court will in any manner prevent the learned Magistrate from passing appropriate orders on the complaint and deciding the same in accordance with law. All contentions of both sides are expressly kept open.

(S.C. DHARMADHIKARI, J.)